



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34427770

Date: NOV. 25, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, she did not show her sustained national or international acclaim and demonstrate she is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established her receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Petitioner met at least three of the claimed evidentiary criteria. However, the Director concluded the Petitioner did not show she garnered sustained national or international acclaim and her achievements have been recognized in the field of endeavor, demonstrating she is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues her satisfaction of additional criteria, and the evidence in the aggregate establishes her eligibility as an individual of extraordinary ability. Because the Petitioner has already shown that she fulfills the minimum requirements of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below.¹

B. Final Merits Determination

As indicated above, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim,² she is one of the small percentage at the very top of the field of endeavor, and her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual’s accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of

¹ *See* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

² *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black’s Law Dictionary’s* definition of “sustain” is “to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time”).

the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ In this matter, we determine the Petitioner has not shown her eligibility.

The record reflects the Petitioner received a bachelor's degree (2010) and a master's degree (2012) in design from the [redacted] in Armenia. According to the submitted screenshots of her website, the Petitioner has participated in exhibitions and displayed her artwork in the United States, Armenia, and various countries in Europe. As discussed further below, the Petitioner has received awards, participated in an association, experienced some press coverage, conducted review work, displayed her work at various venues, and worked on projects. However, in considering the totality of the evidence, the Petitioner has not demonstrated that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that she has risen to that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that she enjoys a career that meets this very high standard.

The Petitioner provided evidence reflecting her receipt of about a half dozen awards from 2010 to 2019. Although the awards may show some recognition of her work from the field, the Petitioner did not demonstrate how they indicate that she is one of that small percentage who has risen to the very top of the field of endeavor. While the Petitioner submitted accompanying articles reporting on the winners or exhibitions, as well as letters offering background information, the Petitioner did not establish that she received awards indicative of the upper echelon in the field. Moreover, based on the documentation, the majority of the awards were either government-sponsored or youth-based.⁴ Here, the Petitioner did not show how her awards place her among that small percentage at the very top of the field or that she garnered national or international acclaim.⁵ USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Furthermore, the Petitioner provided evidence of her membership with the Union Designers of Armenia (UDA). However, the Petitioner did not show how her membership or service resulted in sustained national or international acclaim or reflects that small percentage who has risen to the very

³ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

⁴ For instance, the Petitioner received a gold medal from the [redacted] [redacted] which "seeks to [redacted] [redacted] See [www.\[redacted\].org](http://www.[redacted].org). In addition, the Petitioner garnered certificates of merit from the [redacted] [redacted] and the [redacted]

⁵ M-S-'s letter, describing the [redacted] competition and award, indicates that [redacted] is geared more toward novice and unnoticed artists rather than established and acclaimed artists, such as "[i]t helped artists to become known to the general public, to get acquainted with the masters of the given field, to establish connections, and become famous all over the world."

top of the field of endeavor. The record, for instance, does not contain evidence indicating that she received national or international recognition based on her membership or service with this association. In addition, the Petitioner did not establish that she has distinguished herself from others in the field based on her membership with UDA, gaining national or international attention or placing her among the upper echelon in her field.

Regarding media coverage, the Petitioner offered about a dozen articles covering 2013 – 2023. Again, while the published material indicates some attention to her and her work, the Petitioner did not establish that such reporting is consistent with a level of success among that small percentage who has risen to the very top of the field of endeavor or has achieved sustained national or international acclaim. The Petitioner, for instance, did not show how her limited media coverage, averaging about one article per year, compares to other visual artists among the very top of the field. Here, the Petitioner did not demonstrate how her press coverage reflects a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required.

Likewise, relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of her experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F.3d at 1121-22. The Petitioner judged three exhibitions on behalf of UDA from 2015 – 2016. However, the Petitioner did not establish that these judging instances contributed to a finding that she has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim.

The Petitioner did not show, for example, how her two-year judging experience around eight years ago compares to others at the very top of the field. In addition, the Petitioner did not establish, for instance, that she garnered wide attention from the field based on her evaluation work. Moreover, serving as an exhibition judge on three occasions does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of her field. Without evidence that sets the Petitioner apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed experts in her field, the Petitioner has not shown that her narrow judging experience places her among that small percentage who has risen to the very top of the field of endeavor.

Moreover, as indicated above, the Petitioner submitted evidence that she has displayed her work at venues in the United States, Armenia, and various countries in Europe since 2009. Although the Petitioner established that she exhibited her work, simply displaying one's work, however, does not automatically place one at the very top of the field. Here, the Petitioner did not demonstrate the significance of her collective or individual exhibitions, such as that her work brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success of standings of the events. Again, the nominal press coverage over the last ten years does not show her sustained national or international acclaim. Moreover, the Petitioner's evidence does not distinguish her work from others in her field or show that it reflects a career of acclaimed work in the field. Further, the Petitioner did not establish that her work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor.

Similarly, the Petitioner offered evidence of her participation in the construction of a monument-water spring in the memory of deceased soldiers in the village of [REDACTED] and her preparation of plaster slabs for the [REDACTED]. Although the Petitioner presented letters praising her work on the projects, the Petitioner did not show that her work resulted in widespread acclaim from the field, that she drew significant attention from the greater field, or that the overall field considers her to be at the very top of the field of endeavor.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.⁶ Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). In this case, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that she is among the small percentage at the top of her field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing that while a person may be stronger in one particular evidentiary area than in others, the totality of the evidence must establish that the person is extraordinary).